

REMARKS

Claims 1, 2, 5-9, 12-17, 19, 21-23, 25-31, 33-38, and 40-43 are pending. Claims 1, 5, 8, 12, 15, 21, 23, 25-28, 30, 33, 37, and 40 have been previously amended. Claims 3, 4, 10, 11, 18, 20, 24, 32, and 39 have been previously cancelled. No new matter has been introduced. Reexamination and reconsideration of the application are respectfully requested.

In the August 9, 2007 Final Office Action the Examiner rejected claims 5, 12, and 21 under 35 U.S.C. §103 (a) as being unpatentable over Kim, US PG Pub 2004/0093461, in view of Brucke, US PG Pub 2005/0088894. The Examiner rejected claims 1-2, 6-9, 13-15, 23, 25-31, 33-38, and 40-43 under 35 U.S.C. §103 (a) as being unpatentable over Kim, US PG Pub 2004/0093461, in view of Proebsting, US Patent 6,871,261, further in view of Brucke, US PG Pub 2005/0088894. The Examiner rejected claims 16-17, 19, and 22 under 35 U.S.C. §103 (a) as being unpatentable over Kim, Proebsting, and Brucke as applied to claims 1-2, 6-9, 13-15, 23, 25-31, 33-38, and 40-43 above, in view of Zheng, US Patent 6,195,303. The Examiner's rejections are respectfully traversed.

In the Final Office Action the Examiner indicated that the declaration submitted on 11/27/06 is defective because it was not signed by the inventor. Applicant's representative is submitting a new declaration signed by the sole inventor Howard S. David.

The declaration and exhibit enclosed herewith show that a draft of the present application was mailed and emailed to the inventor on October 23, 2003. The draft application was substantially identical to the application as filed. The application was

constructively reduced to practice when filed on November 14, 2003. Thus the date of invention is at least as early as October 23, 2003. Applicant exercised diligence in reducing his invention to practice. The Brucke reference was filed on October 23, 2003. Thus, the Brucke reference was not filed before the Applicant's date of invention.

The Brucke reference is therefore not prior art. Based upon this, Applicant requests that the rejection of claims 1, 2, 5-9, 12-17, 19, 21-23, 25-31, 33-38, and 40-43 based on the Brucke reference be withdrawn.

Applicant believes that the foregoing remarks place the application in condition for allowance, and a favorable action is respectfully requested. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 488-7100 to discuss the steps necessary for placing the application in condition for allowance should the examiner believe that such a telephone conference would advance prosecution of the application.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

Date: October 24, 2007

By: 

Roger R. Wise
Registration No. 31,204
Attorney for Applicant(s)

725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Telephone: (213) 488-7100
Facsimile: (213) 629-1033

Encls: Rule 131 Declaration with Attachments.

Attachment

1. -43**
XXXX
2. -11**
XXX

Chinn, Stuart B.

From: Chinn, Stuart B.
Sent: Thursday, October 23, 2003 12:23 PM
To: 'David, Howard'
Cc: 'Aldous, Alan'; Wise, Roger R.
Subject: Filing of refresh patent.

Attachments: Refresh102303.doc; LetterInventorDavid.doc; Assignment.doc; DeclarationPOA.doc; Art102303.doc; 102303FIG5671_.doc

Howard,

Please see enclosed Final Draft of the Patent Application, art work, Letter to Inventor, Assignment, and Declaration and Power of Attorney. After reviewing the draft and artwork, please execute the formal documents and return them to me via overnight courier. Also, please fax a copy of the executed documents to (213) 226-4054.

Best regards
Stuart



Refresh102303.doc (155 KB) LetterInventorDavid.doc (44 KB...) Assignment.doc (53 KB) DeclarationPOA.doc (124 KB) Art102303.doc (99 KB) 102303FIG5671_.doc (396 KB)

Stuart B. Chinn, Esq.
Pillsbury Winthrop LLP
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406

voice: (213) 488-7205
fax: (213) 629-1033
e-mail: [Mailto:SChinn@pillsburywinthrop.com](mailto:SChinn@pillsburywinthrop.com)
visit our website: <http://www.pillsburywinthrop.com>